IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

WP(C).No. 16134 of 2004(U)

PETITIONER:

KORATH POTHEN, RTD. ROAD WORKER,
(LAST GRADE SERVANT) P.W.D.ROADS SECTION,
KURAVILANAGAD, RESIDING AT KANJIRAMPARAYIL,
NJEEZHOOR P.O. KOTTAYAM DISTRICT 686 612.

BY ADV. SRI.K.SURENDRA MOHAN

RESPONDENTS:
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1. THE ASSISTANT ENGINEER,
P.W.D.ROADS SECTION, OPPO.DEVAMATHA COLLEGE,
KURAVILANGAD.

2. THE EXECUTIVE ENGINEER,
B & R DIVISION (ROADS), P.W.D. KOTTAYAM.

3. THE STATE OF KERALA, REP. BY THE
SECRETARY TO GOVERNMENT, PUBLIC WORKS AND
TRANSPORT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

4. THE ACCOUNTANT GENERAL (A&E) KERALA,
OFFICE OF THE ACCOUNTANT GENERAL,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT.D.P.RENU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.16134/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: PHOTOSTAT TRUE COPY OF MUSTER ROLL FOR THE PERIOD 1.11.1962 TO 30.11.1962.

EXT.P2: PHOTOSTAT TRUE COPY OF JUDGMENT DATED 10.1.92 IN O.P.NO.8929/01-K, HIGH COURT, ERNAKULAM.

EXT.P3: PHOTOSTAT TRUE COPY OF PROCEEDINGS DATED 16.1.1995 OF THE 4TH RESPONDENT.

EXT.P4: PHOTOSTAT TRUE COPY OF PETITIONERS REPRESENTATION TO THE 3RD RESPONDENT.

EXT.P5: PHOTOSTAT TRUE COPY OF JUDGMENT DATED 4.7.2002 IN O.P.NO.5514/97-F, HIGH COURT, ERNAKULAM.

EXT.P6: PHOTOSTAT TRUE COPY OF ORDER OF the 3RD RESPONDENT DATED 5.5.2003.

//TRUE COPY//

P.A. TO JUDGE

P.R.RAMAN, J.

W.P.(C) NO. 16134 OF 2004

Dated this the 23rd day of January, 2007

J U D G M E N T

Petitioner is a last grade Government servant (Road worker), who retired from service on 31/10/1994. He entered the service in 1962, as an N.M.R.(Non Muster Roll) worker. Petitioner was also regularised and brought into regular establishment and he was designated as Road Worker. According to him, his service from 1962 as an N.M.R. worker is not counted for the purpose of calculating the pensionary benefits, rather his service was reckoned for the pensionary benefit only from 1971.

2. The petitioner along with several other persons had approached this court claiming grade promotion by filing OP No.8929/1991. The petitioner herein was the 3rd petitioner in the said original petition. Grade promotion was denied to the petitioners therein since their services were reckoned only from a later date which will not enable them to get the grade promotion as they would not satisfy requisite number of years. The petitioner contended that he was on the roll in 1963 and as such his service from that date has to be reckoned for grade

promotion. Dealing with this question, this court held with reference to the counter affidavit filed therein as follows:

> "In page 3 of the counter affidavit, the respective dates from which petitioners 1 to 6 were seen enrolled as N.M.R. workers are given. From that it is seen that the petitioners were in the rolls from various dates in 1961 and 1963. Their service from those dates have to be reckoned for grade promotion as per Exhibit P3 order. Respondents are directed to count services rendered by the petitioners as N.M.R. workers from the dates mentioned at page 3 of the counter affidavit and to extend the grade promotion as per Exhibit P3 order as expeditiously as possible."
>
> (emphasis given)

Thus the petitioner's service as an N.M.R worker was to be counted from the date of service as per rules as averred in para 3 of the counter affidavit referred to in the judgment.

3. Admittedly, petitioner has been given grade promotion also reckoning the service from 1963. If the petitioner is entitled to count his service as an N.M.R. worker for grade promotion from 1963, how he can be denied the length of service as N.M.R. worker from 1963 for the purpose of pensionary benefits alone for which there is no answer given. The counter affidavit merely states that this court has only directed to give the benefit of service for the purpose of grade promotion alone, but a person cannot be deemed to be in service from a particular date for grade

promotion and for the purpose of pensionary benefit from a different date. If the petitioner is entitled to be treated as an NMR worker from 1963, necessarily for all purposes he should be treated as an NMR worker including for pensionary benefits. There cannot be two yardsticks, one for giving grade promotion and another for giving pensionary benefits. The length of service as an NMR worker must be the same. What is held in Exhibit P2 judgment is that he should be given grade promotion reckoning his service as NMR worker from 1963. If he is an NMR worker from 1963, then his service as NMR worker from 1963 has to be reckoned for calculating the length of service for pensionary benefits also.

4. The petitioner further avers that similarly situated persons had been given benefit of services reckoning it in the manner in which he has claimed. Admittedly, pursuant to the judgment, necessary entries have been made in the service book also. Exhibit P1 also shows that he was in service during the period 1963. Therefore merely because there arose no occasion for this court to say that for the purpose of calculating the pensionary benefits, his length of service should also be counted

from 1963 onwards, there is no reason to deny the benefit.

5. In the circumstances, the writ petition is allowed.

There will be direction to the respondents to reckon the service of the petitioner as an NMR worker from 1963 onwards for the purpose of total length of service and to recalculate the pensionary benefits and pay the same in accordance with law expeditiously.

P.R.RAMAN, JUDGE

Rp